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Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

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IN THE
SUPREME COURT OF THE UNITED STATES

_____

Thomas-Robert: Peterson — Petitioner

vs.

Detroit: the city — Respondents

ON PETITION OF WRIT OF CERTIORARI TO :

UNITED STATES COURT OF APPEALS
THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Thomas-Robert: Peterson

(15926-Beaverland)

Detroit, Michigan (48223)

(313)-531-3206

42 pp

QUESTIONS :

(1a.) Is the section-7 of the Public-Law-93-579: a federal-law(s)?
Cite: At the United States Statutes at Large, at the 88-Stat-1896.

(1b.) If the answer to question-1a. is no: is the said-Section-7 of the Public-Law-93-579 repealed?

(1c.) If the answer to question 1b is yes: by what act of the Congress is the repeal ?

(2.) What are the requirements upon a local-government or a local-government-agency by the language of the section-7(a)(1) of the Public-Law-93-579 ?

(3a.) What are the requirements upon a local-government-agency, by the language of the section-7(b) of the Public-Law-93-579 ?

(3b.) Of the said-7(b): does the authority have to have a foundation in a written-law, or may the requirement for a social-security-number be an arbitrary-policy?

(3c.) As to a 42-U.S.C.-405(c)(2)(C),(i),(v),(vi) for an exemption-to the section-7(a)(1) of the Public-Law-93-579, does a state-law or a state-regulation have to specifically-require the disclosure of a social-security-number for the 42-U.S.C.-405(c)(2)(C),(i),(v),(vi)-exemption?

(4a.) Of the Public-Law-93-579 : is an unlawful-act of the section-7(a)(1) enforceable by a federal-civil-action upon (or against) a local-government ?

(4b.) Of the Public-Law-93-579 : is the section-7(b) enforceable by a federal-civil-action upon (or against) a local-government ?

(4c.) If the answer to question 4a, and/or 4b is yes : Is the said-local-government liable for the damages?

(5.) By the 42-U.S.C.-1983, is the Section-7 of the P.L.-93-579 specifically the section-7(a)(1) and the section-7(b), enforceable upon (or against) a local-government?

(6.) By the use of the rule-18(b) of the Federal Rules of Civil Procedure (F.R.C.P.), is a joinder of a claim of the 42-U.S.C.-1983 to the instant: proper and/or permissible ?

(7.) Does the 42-U.S.C.-405(c)(2)(C),(i),(v),(vi) contain a requirement that the city-Detroit, or any state, or municipal-agency, or local-government obtain an social-security-number from a Citizen or a individual ?

(8.) Is the Detroit-Public-Drivers-License, deemed a drivers-license as intended by the Congress within the 42-U.S.C.-405(c)(2)(C),(i),(v),(vi)?

(9.) If a local-government such as the city-Detroit, requires a social-security-number, as a mandatory-condition for the lawful-operation of a taxi-for-hire within the said-city, and if the city is unable or fails, (even upon request,) to-provide a citing of a state-law, or regulation, that specifically-requires the social-security-number, thereby is the said-city: in-violation, of the 7(b) of the Privacy Act of 1974 and does the said-violation continue until the time the said-city complies with the said-7(b)?

(10.) Of the instant: the 6th-circuit stated the validity of the 7(b)-claim is questionable: did the circuit-court error by not answering the question of the validity of the section-7(b)?

(11.) By the 42-U.S.C.-405(c)(2)(C),(i),(v),(vi) would an exemption to the requirements of the section-7(a)(1) of the Public-Law-93-579, also give an exemption to the requirements of the section-7(b) of the Public-Law-93-579?

(12.) Does the 42-U.S.C.-405(c)(2)(C),(i);(v),(vi) have a provision for an arbitrary-requirement of a social-security-account-number by a government-agency ?

(13.) Does the 42-U.S.C.-405(c)(2)(C),(i),(v),(vi) have a provision for the arbitrary-administration of a drivers-license by a government-agency ?

(14.) May the ongoing-failure of the compliance with the section-7(b) of the Privacy Act of 1974 by a local-government: be deemed as a "Special-Damage" such as within the Federal Rules of Civil Procedure at the rule-9(g)?

(15.) Is the city-Detroit required to comply with the section-7(b) of the Privacy Act of 1974?

(16.) Is the 42-U.S.C.-405(c)(2)(C),(i),(v),(vi) applied as exemption to the Sec.-7 of the Privacy Act of 1974, unconstitutional as applied to the instant?

(17.) Should the petitioner-Peterson be allowed to add to the Complaint a claim of 42-U.S.C.-1983 against the city-Detroit?

(18) Should the petitioner-Peterson be allowed to add to the Complaint or to the action a special-damage claim as a continuing-non-compliance with the s-7b of the Privacy Act of 1974 by the city-Detroit?

(19.) Is the city-Detroit required to provide the due-process-of-law?

(20.) Are the federal-courts required to provide the due-process-of-law?

(21.) Should the judgements of the district-court and the circuit-court be reversed and the action be sent back to the district-court or the circuit-court, and with a outline or standard for the judgement of the action?

Part B THE PARTIES

petitioner: plaintiff-appellant
Thomas-Robert: Peterson [in-person]
[15926-Beaverland]
Detroit, Michigan [48223] PH (313-531-3206)

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respondent: defendant-appellee : Attorney for Detroit
LINDA D. FEGINS (P-31980)
Detroit Law Department
660 Woodward Ave.
1650 First National Building
Detroit Michigan. [48226]
(313) 237-3057

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PART D : LIST OF APPENDIX:

1 The circuit-court-order dismissing the appeal, filed: Aug.-05-2003 : APX : exhibit :---------- A

2 The district-court-order dismissing the complaint and denying motion for reconsideration, and to amend. dated January-23-2003 : APX : exhibit :----------B

3 The district-court-order denying Plaintiffs motions to amend and ordering Plaintiff to show-cause. dated December-18-2002 : APX : exhibit :----------C

4. The district court docket APX : exhibit:---------- D

5 the Complaint : APX : exhibit :----------E

PART E : BASIS OF JURISDICTION :

Complaint filed: August-12-2002, : By the United States Code title-28 Section-1331 Original-Jurisdiction of the district-court: by a federal-question: UNITED STATES DISTRICT-COURT FOR THE EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

Date of district-court dismiss : January-23-2003

Date of circuit court appeal : January-28-2003, to UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT:

Date of circuit court dismiss: August-5-2003 :

United-States-Code Title-28, Section-1254: a Writ of Certiorari to the Supreme Court:

PART F AUTHORITIES:

28-U.S.C.-1254, Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;
(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

42-U.S.C.-1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42-U.S.C.-405(c)(2)(C),(i),(v),(vi)

(i) It is the policy of the United States that any State (or political subdivision thereof) may, in the administration of any tax, general public assistance, driver's license, or motor vehicle registration law within its jurisdiction, utilize the social security account numbers issued by the Commissioner of Social Security for the purpose of establishing the identification of individuals affected by such law, and may require any individual who is or appears to be so affected to furnish to such State (or political subdivision thereof) or any agency thereof having administrative responsibility for the law involved, the social security account number (or numbers, if he has more than one such number) issued to him by the Commissioner of Social Security.

(v) If and to the extent that any provision of Federal law heretofore enacted is inconsistent with the policy set forth in clause (i), such provision shall, on and after October 4, 1976, be null, void, and of no effect. If and to the extent that any such provision is inconsistent with the requirement set forth in clause (ii), such provision shall, on and after October 13, 1988, be null, void, and of no effect.

(vi) For purposes of clause (i) of this subparagraph, an agency of a State (or political subdivision thereof) charged with the administration of any general public assistance, driver's license, or motor vehicle registration law which did not use the social security account number for identification under a law or regulation adopted before January 1, 1975, may require an individual to disclose his or her social-security-number to such agency solely for the purpose of administering the laws referred to in clause (i) above and for the purpose of responding to requests for information from an agency administering a program funded under part A of subchapter IV of this chapter or an agency operating pursuant to the provisions of part D of such subchapter.

Article-5 of the Bill of Rights: the Constitution for the United States of America :

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment the 14th the Section-1 and Section-5: Constitution for the United States of America :

Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Michigan-Constitution : Article-4, Sec.(s) 1, 22 , 23 ,

Article-4, Sec.-1. The legislative power of the State of Michigan is vested in a senate and a house of representatives.

Article-4, Sec.-22. All legislation shall be by bill and may originate in either house.

Article-4, Sec.-23. The style of the laws shall be: The People of the State of Michigan enact.

the Privacy Act of 1974: The enabling-clause

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Privacy Act of 1974".

the Privacy Act of 1974: The title

AN ACT

To amend title 5, United States Code, by adding a section 552a to safeguard individual privacy from the misuse of Federal records, to provide that individuals be granted access to records concerning them which are maintained by Federal agencies, to establish a Privacy Protection Study Commission, and for other purposes.

the Privacy Act of 1974, Section-7

Public-Law-93-579

88-Stat.-1896

Sec. 7. (a) (1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

(2) the provisions of paragraph (1) of this subsection shall not apply with respect to--

(A) any disclosure which is required by Federal statute, or

(B) the disclosure of a social-security-number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was required under statute or regulation adopted prior to such date to verify the identity of an individual.

(b) Any Federal, State, or local government agency which requests an individual to disclose his social security

account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

Rule 9. F.R.C.P. Pleading Special Matters

(g) SPECIAL DAMAGE. When items of special damage are claimed, they shall be specifically stated.

Rule 18. F.R.C.P Joinder of Claims and Remedies

(b) JOINDER OF REMEDIES; FRAUDULENT CONVEYANCES.

Whenever a claim is one heretofore cognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action; but the court shall grant relief in that action only in accordance with the relative substantive rights of the parties. In particular, a plaintiff may state a claim for money and a claim to have set aside a conveyance fraudulent as to that plaintiff, without first having obtained a judgment establishing the claim for money.

PART G: CONCISE STATEMENT OF CASE:

Filed is the instant: a "pro-se"-complaint (non-attorney) by the Thomas-Robert: Peterson against the City-Detroit: in the Federal-District-Court for the Eastern-District of the State: Michigan. Of the jurisdiction cites the 28-USC-1331: a Federal question, and a tort. Noting the Complaint (at Sec.-C) [APX-E] cites the Claim and Cause-Of-Action as the violation of the Privacy Act of 1974: citing the Section-7(a)(1) of the Public-Law-93-579(88-Stat.-1896) and in the events section of the Complaint (at Sec-D,-part-b) states a violation of the section-7(b) of the Privacy Act of 1974 by the city-Detroit.

Note the Public-Law-93-579 may be cited as the Privacy Act of 1974, per the enabling-clause.

For the reason of a refusal of a disclosure of a social-security-account-number (social-security-number) is the denial of a permit for the operation of a taxi-for-hire within the city-limits of the city-Detroit; with the denial of the permit to the petitioner-Peterson by the city-Detroit. Noting the taxi-permit is of a city-ordinance(s) and the permit is named as a "public-drivers-license" by the Detroit-City-Code, however the permit is without the restraint of a State-drivers-license-law. And the said-permit is denied to the petitioner-Peterson by the general-license unit of the Detroit-Police-Department of the city-Detroit. Noting the concurrence is refused by the city-Detroit

Noting as-to the facts or events: appears without an argument: the Defendant-Detroit admits the denial of the "permit/license" to the petitioner is for the reason of a refusal by the petitioner-Peterson to disclose a social-security-account-number .

Noting in the Complaint: the Act of the Congress: the Public-law-93-579: (88-STAT-1896) is cited in the complaint at the Sec-C : the Claim / Cause-Of-Action .

Of the defendant-Detroit: responded to the summons and complaint, with a several-defenses, but the defendant-Detroit failed to cite a state-statute, a state-regulation, or a city-ordinance as an authority requiring a social-security-number as a condition of the permit.

Noting the petitioner-Peterson: filed-9-27-02 [docket APX-D] a timely-motion(s) pursuant to the F.R.C.P.-rule-18(b), rule-15(a) ("by leave of the court") for a claim of a 42-USC-1983 to the complaint, (noting the defendant-response, had claimed no remedy exists in the Privacy Act of 1974) Noting the district-court denies the motion(s) in the order dated the December-18-2002: stating the inability of the complaint to withstand a F.R.C.P.-rule-12 motion to dismiss, alleging the 42-USC-405(c)(2)(C)(i),(v) has repealed[1] the s-7(a)(1) of the Privacy Act of 1974 ; and of the said 12-18-02-order[APX-C-page-1]: the district-court requires a SHOW CAUSE of the plaintiff as to why the complaint should not be dismissed for a lack of the subject-matter-jurisdiction. Noting the district-court opinions the city-Detroit is administrating a local-taxi-license, pursuant to the 42-U.S.C.-405(c)(2)(C),(i),(v),. And thereby the motions are denied as the "futility of amendment".

In the footnote on the page-6 of the 12-18-02 district-court-order [APX-C] is a question of the existence, or the codification of the section-7 of the Privacy Act of 1974. Noting : Of the instant: the district-court and the circuit-court are without a ruling on the codification of the said-Section-7. And-Noting the district-court had raised questions as to a right to a remedy or a right-of-action by the section-7 of the Privacy-Act of 1974.

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[1] See page-5 of the 12-18-03-district-court-order[APX-C] the district-court-order: states: "" The Privacy Act has been repealed to the extent that it conflicts with a newer federal law..."

Whereupon the plaintiff responds to the courts-order and files a 26-page-show-cause, (filed-1-2-03) stating of the instant the defendant-Detroit use of the 42-USC-405 (c)(2)(C)(i) is by an arbitrary-requirement for a social-security-number, and thereby does not repeal, or exempt, to the section-7(a)(1),(b) of the Privacy Act of 1974 and thereby is not a valid-defense against the Complaint. Also filed is a motion for reconsideration of the denied-motion(s): the claim of a 42-USC-1983 and with the addition of a claim of a "special-damage" ; F.R.C.P.-rule-9(g) , specifically citing the violation of the s-7(b) of the Privacy Act of 1974. However the negligence-claim-motion is abandoned by the plaintiff. Noting all the filings are "pro-se" and without a hearing.

Whereupon in an order dated the January-23-2003[APX-B]: the District-Court denies the show-cause and thereby dismisses the action for the reason of an exemption to the said-7(a)(1), by the 42-USC-405(c)(2)(C),(i),(v) . Thereby dismissed is the action and any and all of the proposed-amendments or additions to the complaint: upon the reason : the "futility of amendment".

Evident from the orders of the District-Court: the action is dismissed solely upon the 42-USC-405(c)(2)(C)(i),(v) as an exemption to, or a repeal of the 7(a)(1). Dismissed by the F.R.C.P.- rule-12(b). without a hearing .

Whereupon the petitioner-Peterson files an appeal to the 6th-circuit-court-of-appeals, in the form of a 26-page-pro-se-appeal-brief and the city-Detroit responds with a 37-page-response, and the appellant files an 15-page-reply. Note of the appeal and reply: state or show of the arbitrary of the 42-USC-405(c)(2)(c)(i), by the operative-requirements.

Whereupon in the order, filed-8-5-03[APX-A] : the 6th-circuit-court affirms the district-court ruling, and dismisses the petitioners appeal, without a hearing, and thereby dismisses the motion(s) for the amendments or joinder to the

Complaint : dismisses the motion(s) for a reconsideration and the special-damage for the "futility of amendment".

Noting the circuit-court states the second-motions are not argued. (page-3 of the 8-5-03-order [APX-A])

Part H : Argument:

Preference: Noting the petitioner is a pro-se: without the professional-legal-training: the briefs may appear unconventional to a legal-professional or counsel.

Due-to the like-conclusions, some repetition appears unavoidable.

Of the form and the style of the "argument": are the notes, and/or the details as-to the statutory-construction, or the application of the statutory-construction, for the insight as-to the intent of the Congress, as-to the due-process. And of the instant, as-to the constitutionality of the rulings of the district-court and the circuit-court.

STATEMENT OF THE REASONS FOR THE ALLOWANCE OF THE WRIT:

Noting the district-court denies the subject-matter-jurisdiction upon the city-Detroit and the district-court-ruling is affirmed by the circuit-court:

Note the codification and existence of the Sec.-7 of the Public-Law-93-579 is questioned by the district-court, but without a ruling by the district-court or by the circuit-court.

Of the instant: By a failure of the due-process, cites the unconstitutionality of the district-court and of the circuit-court-ruling. Noting the conflict(s) with the federal court rulings, including the conflict with the rulings of the Supreme Court, thereby of the instant: repugnant to the 5th-Amendment and to the 14th-Amendment are the rulings of the district-court and of the circuit-court .

THE IMPORTANCE OF THE WRIT:

Of the rulings: the unconstitutionality allows the city-Detroit to deny the due-process and notes the stare-decisis of the instant allows the violation of the federal-law(s)upon the public. Noting the stare-decisis of the instant: upon a local-government and not-upon a State. Please-Note Of the instant: the subject-matter, is the only-stare-decisis known to the petitioner that is upon a local-government, (others cited of this action are upon a State) thereby an error of circuit-court as-to the Sec-7 and a local-government-agency is upon the public, notes an importance of the WRIT. And unable is the petitioner, of the finding, at the Supreme-Court-level: the stare-decisis as to the Section-7 of the Privacy Act of 1974. Therefore a ruling by the Supreme Court as to the existence and to the requirements of the language of the Section-7 of the Privacy Act of 1974, appears as a benefit upon the public.

Unconstitutionality is based on the fact, of the instant: the rulings of the district-court and the circuit-court holds an arbitrary-policy as the weight of a written-law, and thereby a damage upon the Citizen as the individual by a failure of the due-process. Noting the ruling(s) of the said-court(s) is in conflict with other federal-court(s) and in conflict with the Supreme Court rulings, which have consistently held to the unconstitutionality of the arbitrary-requirements upon the Citizens by the government or by the government-officials (stare-decisis-infra). Therefore and thereby is the error(s) in the case-law or stare-decisis at the circuit-court-level, and notes a deprivation of the "just, speedy, and inexpensive determination", (pursuant to the Federal-Rules-of Civil-Procedure-Rule-1) upon the public at the district-court and at the circuit-court-level, thereby presumes a detriment upon the public.

Presumes an additional-error by the circuit-court: note the circuit-court should have answered the question of the

matter of the section-7(b) of the Privacy Act of 1974, and thereby: noting an error in the matter of the dismissing a pro-se-complaint or appeal, thereby is the bad-case-law or stare-decisis, and thereby a detriment upon the public. Noting per the page-3 of the circuit-court-order[APX-A] ; quote: " the validity of s-7(b) is questionable". However cite Conley v:

" .... complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts .... " Conley v. Gibson 355 U.S. 41 (1957).

ARGUMENT: General argument:

Whereas the circuit-court did-not seek the 28-U.S.C.-1254-(2)-certification, or rule against the existence of the Sec-7 of the Public-Law-93-579 (the "Privacy Act") therefore of the instant: the Sec.-7 of the Public-Law-93-579 as a federal-law: IS relied upon by the petitioner.

Note the district-court: HELD: that the 42-USC-405(c)(2)(C)(i),(v), ("s-405")"repeals" the section-7 of the Privacy Act of 1974, however for the operation of the 42-USC-405(c)(2)(C)(i),(v),(vi) is the internal-requirement of an administration of a state-law and please-note: within the Sec.405(c)(2)(C),(i)(iv),the term law is used a 4-times noting the city-Detroit never cited as the operative: the state-law-authority, or arguendo a local-ordinance. However the circuit-court affirms the district-court, dismisses the action in the 8-5-03-order, (page-3) [APX-A] Quote:

"Accordingly, the district court's judgment is affirmed"

Further-Noting the clear and unambiguous: language of the Congress of the said-section-7 and the said-section-405, with the statutory-construction: relying upon the maxim, the language of the law, is the intent of the law.(cite) U.S. v Goldenberg infra.

" The primary and general rule of statutory construction

is that the intent of the lawmaker is to be found in the language that he has used. He is presumed to know the meaning of words and the rules of grammar. The courts have no function of legislation, and simply seek to ascertain the will of the legislator." US. v. Goldenberg, et al., 168 U.S. 95, 102 (1897).

(cite) Williams v Coleman, infra.

"Application of the maxim {expressio unius est exclusio alterius} to a list of things creates an inference that things omitted from the list are excluded. Williams v Coleman, 194 Mich App 606; 488 NW2d 464 (1992).

Further-argument: the language of the 42-USC-405(c)(2)(C)(i),(v),(vi) ("s-405") requires a state-law for the operation of the statute, without such authority, is the failure of the due-process for the reason: the section-7 of the Public-Law-93-579 is upon the local-government, and as a benefit to the Citizen as the individual.

Pursuant to the Supreme-Court-Rule-15(2): thereby the instant appears: easy-to-defend as the city-Detroit must-only-show, of the state-law requiring a social-security-number. Note the 42-U.S.C.-405(c)(2)(C),(i),(v),(vi), allows under the certain-circumstance for the requirement of a social-security-number, however the said-s-405 is without a requirement for a social-security-number.

Noting the P.L.-93-579 is "enacted by the Senate and House of Representatives of the United States of America in Congress assembled" [1].Noting the local-government is bound by the language of the Act of the Congress, and outside of the language of the Act of the Congress is a failure of the due-process; noting the Supreme Court has consistently ruled an arbitrary-policy, outside the language of the law, is a failure of the due-process. (stare-decisis-infra)

[1] As-per the enabling-clause of the Act: the P-L-93-579.

Contained in the appendix: A,B,C, are the lower-court-orders, dismissing the complaint: neither court cites a state-law, regulation, or a municipal-ordinance as operative to the 42-U.S,C.-405(c)(2)(C),(i),(v),(vi). and the district-court admits a state-driver-license is required for the operation of the said-s-405, see page-5 of the 12-18-02-order, and page-3 of the 1-23-03-order: quote: "in the administration of any....driver's license, or motor vehicle registration law". And the circuit--courts admits a state-law is required, on page 2 of the Aug.-5-03-order: quote: "permits states to require disclosure of social security numbers in the administration of its driver's license law." Noting the municipality may not pass a law; vis a vis a municipality may pass an ordinance, cite the Michigan-Constitution;

Article-4,Sec.-1. "The legislative power of the State of Michigan is vested in a senate and a house of representatives. "

Article-4,Sec.-22. "All legislation shall be by bill and may originate in either house."

Article-4,Sec.-23. "The style of the laws shall be: The People of the State of Michigan enact. "

Noting the FACT : the state-license required for the operation of a taxi-for-hire, is a Michigan-Chauffeurs-License, and the state-law of the Michigan does-not require a social-security-number as a condition for a Michigan-Chauffeurs-License. Thereby the evidence of an arbitrary-requirement for a social-security-number, by the city-Detroit, vis a vis the evidence notes the unconstitutional-rulings of the district-court and the circuit-court.

(1) FACT : of the instant: the permit for the operation of a taxi-for-hire is named as a"public-drivers-license" by the Detroit-City-Code but the said-"public-drivers-license" is not a state-drivers-license and is not restrained by the state-law.

(2) FACT : of the Statute : the 42-U.S.C.-405(c)(2)(C), (i),(v),(vi), : for an exemption to the federal-law: requires the administration of a State-driver-license-law, thereby a State-law. (the word: law is used a 4- times within the 3-statute-sections)

(3) FACT: the section-7 of the Privacy Act requires a valid-authority from a local-government as a condition upon the requirement of a social-security-account-number.

(4) FACT : the sections of Detroit-City-Code, cited by the city-Detroit do not require a social-security-number.

(5) FACT: the section-7(b) of the Privacy Act requires the citing of the valid-authority for the requirement of a social-security-number, at or before the time of the request[1].

(6) FACT : an act by a government or government-officer without an authority of a written-law is an arbitrary-act.

(7) FACT : the article-5 of the Bill of Rights requires the due-process of the law, upon the property or the time-of-life of a Citizen. Note the arbitrary-acts of the government lack of the due-process (stare-decisis-infra).

(8) FACT : the Amendment: the 14th of the Constitution is upon the government-agency and thereby upon the local-government, and requires the due-process of the law, by the government. Note the arbitrary-acts of the government lack of the due-process (stare-decisis-infra).

(9) FACT: The Constitution for the United States of America is the supreme law of the Land, citing Article-6, section-2, of the Constitution (the supremacy clause).

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[1] " The requirements of section 7(b) are not fulfilled, however, when no affirmative effort is made to disclose this information at or before the time the number is requested and an citizen, like Doyle, must instead pry the pertinent facts from a state agency." Doyle v. Wilson 529 Fed-Supp 529,1343, 1350,

(10) FACT : there is no state-law of the State-Michigan that requires a social-security-number for the operation of a taxi-for-hire. Therefore by the simple-understanding: the requirement under the color of the state-law is an arbitrary-requirement.
(11) FACT : the 42-U.S.C.-405(c)(2)(C),(i),(v),(vi): requires the operative-facts within the said-405 for the lawful-operation of the statute.
(12) CONCLUSION: the arbitrary-requirement of a social-security-number, upon the petitioner by the city-Detroit is an unconstitutional and an unlawful requirement.

STARE-DECISIS arbitrary-requirements by a government.

Of the Yick Wo v Hopkins infra (1886).

AT-ISSUE-WAS: The ordinances as to laundries in wooden buildings: ordinances arbitrary in nature and allowed for the discrimination by the administration and to the enforcement, therefore the ordinances are found void and with the directions to discharge the petitioners from custody-and- imprisonment, as were held under the authority of the said-ordinances. Notes the authority must be specifically stated within the ordinance, (or statute) and not in the discretion or the arbitrary-will of the officer(s), (the-board-of-supervisors) in order to satisfy the due-process of law.

Citing : Yick Wo v. Hopkins, 118 U.S. 356 (1886);

" We are not able to concur in that interpretation of the power conferred upon the supervisors.There is nothing in the ordinances which points to such a regulation of the business of keeping and conducting laundries. They seem intended to confer, and actually to confer, not a discretion to be exercised upon a consideration of the circumstances of each case, but a naked and arbitrary power to give or withhold consent, not only as to places, but as to persons; so that, if an applicant for such consent,

being in every way a competent and qualified person, and having complied with every reasonable condition demanded by any public interest, should, failing to obtain the requisite consent of the supervisors to the prosecution of his business, apply for redress by the judicial process of mandamus to require the supervisors to consider and act upon his case, it would be a sufficient answer for them to say that the law had conferred upon them authority to withhold their assent, without reason and without responsibility. The power given to them is not confided to their discretion in the legal sense of that term, but is granted to their mere will. It is purely arbitrary, and acknowledges neither guidance no restraint"
Yick Wo v. Hopkins 118 U.S. 356 (1886);

"Sovereignty itself is, of course, not subject to law, for it is the author and source of law; but in our system, while sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts. And the law is the definition and limitation of power. "Yick Wo v. Hopkins supra

" there is nothing in the ordinance to guide or control his action. It lays down no rules by which its impartial execution can be secured, or partiality and oppression prevented" Yick Wo v. Hopkins supra

"In fact, an ordinance which clothes a single individual with such power hardly falls within the domain of law, and we are constrained to pronounce it inoperative and void.' This conclusion, and the reasoning on which it is based, are deductions from the face of the ordinance, as to its necessary pendency and ultimate actual operation. "
Yick Wo v. Hopkins supra

"The discrimination is therefore illegal, and the public administration which enforces it is a denial of the equal ' protection of the laws, and a violation of the fourteenth amendment of the constitution. The imprisonment of the petitioners is therefore illegal, and they must be discharged." Yick Wo v. Hopkins supra

And citing a Michigan case, clearly an officer or agent of the government must have a specific-authority and the said-authority must be of the written-law, such as called for in the 7 of the Privacy Act of 1974.

Sittler v. Board of Control of Michigan College of Mining and Technology, 333 Mich. 681, 53 N.W.2d 681, 684 (1952)

"The extent of the authority of the people's public agents is measured by the statute from which they derive their authority, not by their own acts and assumption of authority" .

And citing the 9th-circuit:

Phillips v. Fidalgo Island Packing Co., 238 F.2d 234 (9th Cir. 1956); (afirming 120 F Supp 777)

"Generally, administrative officer's authority is limited to the carrying out of a law according to its terms"

And when an municipal acts are "ultra-vires", or without a specific-statutory-authority: are by definition void and presumably without the duty to enforce or the requirement to obey: (cite)

Outboard Marine Corp. v. Thomas, 610 F.Supp. 1234, 1242 (N.D. Ill. 1985) "Acting without statutory power at all, or misapplying one's statutory power, will result in a finding that such action was ultra vires".

Noting Giordano v.infra: the Court suppressed the evidence when the delegation of authority was not specific to the statute: (cite) United States v Giordano , 416 U.S. 505, 94 S.Ct. 1820 (1974), at issue was the validity of a wire-tap

application, which under existing law could be approved only by the Attorney General and a specially designated assistant. In this case, a wire-tap was needed and application was submitted to the Attorney General, who was absent from his office as was the designated assistant. Instead, an executive assistant lacking authority to approve the application authorized it on the supposition that the Attorney General would approve. The Court held the executive assistant's act void, declared the wire-tap illegal, and as a consequence evidence was suppressed.

Other federal courts have reached much the same determination and dismissed cases because of a improper delegation of authority.

United States v Emerson 846 F 2d 541 (1988, 9-Cir) the case was dismissed because of a lack of a delegation of authority form the Attorney-General.

United States v Pees, 645 F Supp. 697 , 707 infra (1986)

"Such Carte Blanche authorization by Congress has never occurred"

And again Spain v. infra the government could point to no law granting an authority for the action thereby the conviction is reversed. United States v. Spain, 825 F.2d 1426 (10th Cir. 1987), at issue was the authority of the Drug Enforcement Administration to place certain substances upon the federal controlled substances list and thus make possession thereof a crime. Under former provisions of this law, the Attorney General possessed this power to schedule controlled substances, and he had previously delegated that authority to the DEA. But, in 1984, Congress amended the law and provided a new statutory procedure by which such substances could be placed upon the list through a "bypass" procedure. Without delegated authority to schedule drugs under the amendment, the DEA did so and commenced prosecution of parties possessing the newly scheduled drugs.

However, Spain's conviction was reversed when the Court held that the DEA's acts were void due to the lack of delegated authority to schedule the drugs pursuant to the new statutory procedure. Other courts have reached the identical conclusion; see United States v. Pees, 645 F.Supp.697 supra (D. Col. 1986); United States v. Hovey, 674 F. Supp. 161 (D. Del. 1987); United States v. McLaughlin, 851 F. 2d

STARE-DECISIS as-to a "pro-se":

If the finding is the pro-se-complaint is the rule-12(b)-dismissed for a legal-technicality then the dismissal would be contrary to the stare-decisis.

Conley v. Gibson 355 U.S. 41 (1957):

" In appraising the sufficiency of the complaint we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. "
Conley v. Gibson supra

The Court Held: " Failure of the complaint to set forth specific facts to support its general allegations of discrimination was not a sufficient ground for dismissal of the suit, since the Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim." Conley v. Gibson supra

".....the Federal Rules of Civil Procedure do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is a short and plain statement of the claim" that will give the defendant fair notice of what the plaintiff's claim is

and the grounds upon which it rests. The illustrative forms appended to the Rules plainly demonstrate this. Such simplified "notice pleading" is made possible by the liberal opportunity for discovery and the other pretrial procedures established by the Rules to disclose more precisely the basis of both claim and defense and to define more narrowly the disputed facts and issues. Following the simple guide of Rule 8 (f) that "all pleadings shall be so construed as to do substantial justice," we have no doubt that petitioners' complaint adequately set forth a claim and gave the respondents fair notice of its basis. The Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits."
Conley v. Gibson supra

Of the McGrucken v Smith infra the 9th-circuit indicates a pro-se-litigant must be advised of and given a chance to repair any technical-defects of the complaint. Noting the instant-petitioner is not advised of any technical-defects of the complaint by the district-court or the circuit-court.

" Before district-court may dismiss pro se complaint for failure to state a claim, the court must provide the pro-se-litigant with notice of the deficiencies of his or her complaint and an opportunity to amend the complaint."
McGuckin v Smith 974 F.2d 1050. (9-Cir.1992)

US v Gaubert infra: presumed a pro-se-action, and notes the importance of the statutory-construction, as to the discretion of an government-agency or the officers, and requirement of a specific-authority, for any arbitrary-acts of the government-agency, and notes the fact : Gaubert is permitted to amend his complaint:

the Court held :

"3. The Court of Appeals erred in holding that some of the acts alleged in Gaubert's Amended Complaint were not discretionary acts within the meaning of 2680(a)". United States v Gaubert 499 U.S.315 (1991): Noting of the instant: the pro-se-Plaintiff is not permitted to amend his complaint.

ARGUMENT: the details

Note: the counsel for the city-Detroit is a legal-professional of a municipal-legal-department and has failed to-show a repeal by the Congress of the said-Section-7 of the Public-Law-93-579, and the district-court and the circuit-court failed the showing of a repeal by the Congress of the said-Section-7. Therefore the petitioner is relying upon the language of the Congress of the said-Section-7 as a federal-law.

Argument: By the section-7 of the Privacy Act of 1974, certain acts are unlawful to a local-government-agency (a municipality), therefore the municipality must stay within the language of the Congress for an immunity to the liability created by the section-7(a)(1)(2) and section-7(b) of the Privacy Act of 1974.

Specific to the 42-U.S.C.-405(c)(2)(C),(i),(v),(vi): please-note the word or term: "law" used a 3-times within the section-(i) and a 1-time within the section(iv), noting the Sec-(vi) is operative to the Sec-(i), and the implied-law is a State-law, vis a vis the municipality may-not pass a law. (Michigan-Constitution supra.) Taken-together: the three-sections of the 42-U.S.C.- 405(c)(2)(C),(i),(v),(vi): requires the administration of a state-law for a valid-operation of the statute(s) , and for an repeal or an exemption to the s-7(a)(1) of the Privacy-Act.. Because the city-Detroit is unable of the citing of a law, requiring the social-security-number, thereby of the instant: the 42-U.S.C.-405(c)(2)(C),(i) is without a

conflict to the section-7(a)(1),(b) of the Privacy-Act. Note the operative, as the Sec.-(v) states:

> " If and to the extent that any provision of Federal law heretofore enacted is inconsistent with the policy set forth in clause (i), such provision shall, on and after October 4, 1976, be null, void, and of no effect.".

Without a conflict: the provisions of s-7(a)(1),(b) apply to the policy of the city-Detroit . Thereby the city-Detroit must-defend the subject-matter, or comply with the federal-law.

Noting the section-7(b) requires the citing of the authority for the request: before or at the time of the request: (cite) Doyle v Wilson infra:

> " The requirements of section 7(b) are not fulfilled, however, when no affirmative effort is made to disclose this information at or before the time the number is requested and an citizen, like Doyle, must instead pry the pertinent facts from a state agency." Doyle v. Wilson 529 Fed-Supp 529,1343, 1350,

For the record: to-date the city-Detroit has failed the citing of a state-statute requiring a social-security-number, and arguendo the city-Detroit has not even cited an local-ordinance or a written-policy or filed an affidavit: stating an authority for the requirement of a social-security-number.

And within the operation of the 42-U.S.C.-405(c)(2)(C), (i), (v),(vi), the pro-se-petitioner is unable to find an exemption or an implied-exemption to the section-7(b) of the Privacy Act of 1974, and thereby a failure of the due-process-of-law. Noting the 7(b) states the notice of the authority must be at the time of the request. Vis a vis by the due-process: thereby a Citizen as the individual may know the lawful-authority of the officer.

Please-Note: a right-of-action as a property-right (cite) Prichard v Norton.

"A vested right of action or a vested right to an existing defense, whether they spring from contract or from the principles of the common law, are property in the sense that it is not competent for the legislature to take them away." Pritchard v Norton, 106 US 124.

Constitution: Bill of Rights: Article-5
" any person"....."nor be deprived of life, liberty, or property, without due process of law "

Constitution: Amendment-14 " Section-1
"... nor shall any State deprive any person of life, liberty, or property, without due process of law; ..... "

Laches and simple-understanding note the petitioner is denied the due-process of law, with a loss of the time-of-life and/or the property. Therefore repugnant to Amendment-5 and Amendment-14 of the Constitution, are the lower-court-rulings. .

Evident in the circuit-court-order[APX-A] and in the district-court-order(s)[APX-B,C] of the instant: the city-Detroit did not cite an authority other than an arbitrary-policy, for the requirement of the social-security-number. Please-note the January-23-03-order [APX-B] of the district-court that dismisses the action; on the page-2 the district-court admits the Plaintiff makes the argument that the defendant-Detroit cannot identify a written-law requiring a social-security-number QUOTE :

" ....Plaintiff appears to make two arguments: (1) that 42 s405 (c)(2)(C)(i) does not apply because Defendant cannot identify a legal grant of authority for the requirement that an applicant for a taxi license provide his social-security-number for the license application;" and (2) Plaintiff should be permitted to amend his complaint to include a claim for violation of s7(b) of the Privacy Act of 1974.".

Together-with, on the Page-3 of the said-January-23-order the district-court admits the requirement for a social-security-number is an arbitrary-policy of the defendant-Detroit. QUOTE:

"In order to complete efficient and accurate record checks, the city uses the social-security-numbers....." .

And the district-court-order(s) are without an mention of a written law or regulation as a requirement for the social-security-number.

Arguendo: the city-Detroit did not file an affidavit stating a responsibility or a need for the social-security-number, therefor anybody in the administration could have required the policy of using social-security-numbers, from a lazy-bookkeeper to the police-chief, to the mayor, and I say anybody, because to-date we have only the city-Detroit-counsel allegations that the social-security-number is needed.

Presume the reason the district-court and the circuit-court failed a note of a state-law or a local-ordinance that requires a social-security-number is because the city-Detroit failed a cite of a law or a ordinance requiring the social-security-number: notes a 7(b)-violation. And the petitioner does not believe such a law or ordinance exists.

Noted-conclusion: the district-court and the circuit-court have are in error by giving an arbitrary-policy the weight of a written-law, and thereby is a failure of the due-process, noting Municipality is restrained to the law or statute by the 14th-Amendment, Nixon v Condon infra.

" The Fourteenth Amendment is a restraint upon the states and not upon private persons unconnected with the state." Nixon v Condon 286 US 73.

On the page-4 of the district-court-order, dated December-18-2002, (the order for show-cause) the district-court states: QUOTE:

" Inasmuch as the Plaintiff cannot show that the Privacy Act creates an individual right remediable by s-1983, Plaintiff will not be permitted to amend his complaint to include such a claim."

However of the action Owen v City of Independence infra: the Court states a statute may create an liability upon a municipality. Thereby argues the section-7(a)(1),(b) of the Public-Law-93-579 creates a civil-liability upon a municipality, otherwise how would the dictates of the Congress be enforced upon a municipal-government.

"That municipal corporations were commonly held liable for damages in tort was also recognized by the 42d Congress. See Monell v. New York City Dept. of Social Services, 436 U.S., at 688 . For example, Senator Stevenson, in opposing the Sherman amendment's creation of a municipal liability for the riotous acts of its inhabitants, stated the prevailing law: "Numberless cases are to be found where a statutory liability has been created against municipal corporations for injuries resulting from a neglect of corporate duty." Cong. [445 U.S. 622, 643] Globe, 42d Cong., 1st Sess., 762 (hereinafter Globe). 23 Nowhere in the debates, however, is there a suggestion that the common law excused a city from liability on account of the good faith of its authorized agents"

Owen v. City of Independence 44-US-622

For the record: cite Owen v. City of Independence 44-US-622 [supra] is an 42-U.S.C.-1983-action: affirming the fact: the local-governments must obey the Constitution and federal-laws: vis a vis must obey the Acts of the Congress. Noting: Peterson: filed a timely-motion pursuant to the F.R.C.P.-18(b); for the addition or joinder of a claim of 42-U.S.C.-1983 to the action. Dist.-court-docket [APX-D].). Owen v. and with the s-1983: cite the city has no discretion to violate the Federal-Law or the Federal Constitution.

" The principle of sovereign immunity from which a municipality's immunity for "governmental" functions derives cannot serve as the basis for the qualified privilege respondent city claims under 1983, since sovereign immunity insulates a municipality from unconsented suits altogether, the presence or absence of good faith being irrelevant, and since the municipality's "governmental" immunity is abrogated by the sovereign's enactment of a statute such as 1983 making it amenable to suit. " And the doctrine granting a municipality immunity for "discretionary" functions, which doctrine merely prevented courts from substituting their own judgment on matters within the lawful discretion of the municipality, cannot serve as the foundation for a good-faith immunity under 1983, since a municipality has no "discretion" to violate the Federal Constitution. "

Owen v. City of Independence 44-US-622

FACT : Dismissed for a lack of the subject-matter-jurisdiction is the action: noting the district-court-order dated the 1-23-03,(page-2-Section-I)[APX-B] quote:

"...., the court ordered the Plaintiff to show cause why this case should not be dismissed for lack of subject matter jurisdiction."

Noting the show-cause is denied by the district-court, and thereby the action is dismissed. However if the operation of the 42-U.S.C.-405(c)(2)(C),(i) is deemed the "arbitrary", thereby in-error is the district-court-ruling and by the affirm of the said-ruling: error by the circuit-court.

For-the-record: in the district-court order: dated 1-23-03, page-3 (revenant part below*) is the claim: the 42-U.S.C.-405(c)(C)(2)(i) allows exemption to the Privacy Act of 1974: the court notes the authority for the request as the entire section of the Detroit-City-Code: Carte-Blanche or

cited by the defendant-Detroit without a cite of a specific-code-section, And please-note the petitioner is unable of the finding of a requirement for a social-security-number within the cited-58-1-1-et-seq.(Dist-Court-order-page-3 [APX-B])

*"Section 58-1-1, et seq of the Detroit-City-Code of 1984 is a comprehensive regulatory scheme for vehicles for hire, such as taxicabs, within the city of Detroit, The Code provides operation and licensing requirements including a requirement that drivers be subject to periodic record checks by the police for criminal convictions. In order to complete efficient and accurate record checks, the city uses the social-security-numbers of drivers."

Noting arguendo: the petitioner doubts a Carte-Blanche-authorization would be applicable. : U.S. v Pees infra;

Citing as a maxim: Pees v. infra.

"Such Carte Blanche authorization by Congress has never occurred" United States v Pees, 645 F Supp. 697, 707 (1986)

Argument, Noting the operation of a taxi-for-gain in a simple-form, as a contract: a contract between the driver of the taxi and the passenger in the taxi. Presume the petitioner-Peterson has a right of the contracting for the exchange of the labor or the time of life, such as operating a taxi, for a gain, within the city-Detroit, and the city-Detroit has the right and the responsibility of the regulating of the commerce: i.e. the regulation of the commercial-operation(s) within the city-limits, then the city is bound of the due-process of the law as-to the said-regulating.

If there were an city-ordinance that requires the social-security-number then the petitioner-Peterson might have argued the ordinance is unconstitutional, or if the city-Detroit had cited a state-law requiring a social-security-number, thereby the petitioner-Peterson might have argued the state-

law is unconstitutional. Without a written-law, thereby the city-Detroit is liable to the language of the section-7 of the Privacy Act of 1974 and presumably liable for the damages: Cite: Owen v. City of Independence:

" Municipalities were therefore liable not only for their "proprietary" acts, but also for those "governmental" functions as to which the State had withdrawn their immunity. And, by the end of the 19th century, courts regularly held that in imposing a specific duty on the municipality either in its charter or by statute, the State had impliedly withdrawn the city's immunity from liability for the nonperformance or misperformance of its obligation. See, e. g., Weightman v. The Corporation of Washington, 1 Black 39, 50-52 (1862); Providence v. Clapp, 17 How. 161, 167-169 (1855). See generally Shearman & Redfield 122-126; Note, Liability of Cities for the Negligence and Other Misconduct of their Officers and Agents, 30 Am. St. Rep. 376, 385 (1893). Thus, despite the nominal existence of an immunity for "governmental" functions, municipalities were found [445 U.S. 622, 647] liable in damages in a multitude of cases involving such activities." Owen v City of Independence supra.

FEDERAL-STATUTE-ENFORCEMENT:

Whereas the city-Detroit and the district-court and the circuit-court, cites a federal-statute: the 42-U.S.C.-405 (c)(2)(C),(i),(v) , as an authority for the requirement of a social-security-number, even though the language of the said-s-405 does not require a social-security-number : arguendo: without the jurisdiction for the enforcement of a federal-statute is the municipality-Detroit. citing: U.S.v Cruikshank infra.

"The people of the United States resident within any State are subject to two governments: one State, and the other National; but there need be no conflict between the two. The powers which one possesses, the other does not . They are established for different purposes, and have separate jurisdictions. Together they make one whole, and furnish the people of the United States with a complete government, ample for the protection of all their rights at home and abroad. True, it may sometimes happen that a person is amenable to both jurisdictions for one and the same act. Thus, if a marshal of the United States is unlawfully resisted while executing the process of the courts within a State, and the resistance is accompanied by an assault on the officer, the sovereignty of the United States is violated by the resistance, and that of the State by the breach of peace, in the assault. So, too, if one passes counterfeited coin of the United States within a State, it may be an offence against the United States and the State: the United States, because it discredits the coin; and the State, because of the fraud upon him to whom it is passed."
U S v. CRUIKSHANK, 92 U.S. 542 (1875)

ARGUMENT: PRO-SE-STANDARD:

Noting the circuit-court-order called the 7(b)-claim : "questionable". On the page-3 of the circuit court order [APX-A] the court states: " ...,the validity of s-7(b) is questionable...". How can a pro-se-action be dismissed if there is a question as to a claim of a federal-law; and noting the federal-courts do not hold the "pro-se" to the standard of a trained-legal-professional. Noting the articulation of a 7(b) violation in the Complaint, at the Sec-D(b) [APX-E]. Noting a conflict with Conley v Gibson supra; Notes the logic if the claim is questionable then not beyond a doubt .

Argument: why would the circuit-court say the clear-language of the section-7(b) of the Privacy Act of 1974 is questionable. By the simple-understanding: the city-Detroit or its agency either did or did-not cite an authority required by the s-7(b) Nowhere in the fillings of the city-Detroit is the petitioner able to find the 7(b)-authority. Pursuant to the Supreme-Court-Rule-15(2) the city-Detroit must respond with the specific-cite, if in fact there is such a citing, of the record or otherwise.

And noting the language of the district-court-order. (the 1-23-03-order, page-6 [APX-B]): Quote:

> "Accordingly, Plaintiff has not persuaded the court that dismissal of his complaint is unwarranted. For the same reasons Plaintiff's motions to amend will be denied."

By the context of the word(s):"persuaded"and"unwarranted" it appears the district-court is with a doubt as to the subject-matter, and would appear in conflict with the Conley v. Gibson supra: as the notice-pleading is sufficient.

ARGUMENT AS-TO THE MOTIONS:

On the page-3 of the circuit-court-order, (filed-8-5-03) [APX-A] the court states: quote

> " Peterson has waived appellate review of the district-court's denial of his second motion to amend his complaint because his appellate brief does not contain any argument as to why the district-court's denial of such motion was improper"

Noting the dismissal is for the reason: the lack of subject-matter-jurisdiction by the 42-U.S.C.-405(c)(2)(C),(i)(v); all the motions and the special-damage are dismissed, by the district-court and the circuit-court as the futile; upon the dismissal of the Complaint. Noting the matter of the 42-U.S.C.-405(c)(2)(C)(i),(v),(vi) is argued, thereby it-would-follow: the motion(s) as the motions for reconsideration with

the claim of a special-damage are argued.

Noting it appears the pro-se is held to a high technical-standard and contrary to the rulings of the Supreme Court.

Special-Damage:

Whereas the section-7(b) requires citing the authority at the time of the request: Peradventure, if the city-Detroit were able to find and cite a valid-law requiring the social-security-number of the petitioner. Whereas: To-Date: the city-Detroit is failed the cite of the authority , violate of the 7b. Noting of the aforesaid, remains an injury or a damage upon the petitioner: a "Special-Damage"; F.R.C.P.-9(g), thereby the s-7(b) as a Special-Damage-Claim could be added to the instant: as an insurance for a remedy.

42 U.S.C. 1983 :

In the event: the city-Detroit is found violate of the federal-law(s): the addition of an 42-U.S.C.-1983 may-be-required for the remedy, as to the payment of the damages, and pursuant to the Federal rules of Civil Procedure, Rule-18(b), thereby the 42-U.S.C.-1983-claim could be added to the instant.

ARGUENDO: CODIFICATION OF Sec.-7:

Noting the district-court averred in the footnote on page-6, of the 12-18-02-order [APX-C]: the Sec-7 of the Privacy Act may not be codified. However the district-court and the circuit-court did not rule upon the codification of the said-section-7.

Note of the Public-Law-93-579-supra, by the TITLE of the Act: quote: " To amend title 5, the United States Code....." and quote: "....and for other purposes".

Note the United States Statutes at Large: the Public-Law-93-579; 88-Stat-1896, 1909 : the Act of the Congress: is approved on the December-31-1974, and citing:

Gardner V. the Collector 6 Wall 499, quote: "The date of the President's approval of the bill is undoubtedly the date at which it became a law, ..." Note the bill is the law.
And again citing

> ""Every bill which shall have passed the House of Representatives and the Senate shall, before it becomes a law,be presented to the President of the United States; if he approve, he shall sign it, but if not, he shall return it, with his objections, to that House in which it shall have originated." "If any bill shall not be returned by the President within ten days (Sunday excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it." Here are two courses of action by the President in reference to a bill presented to him, each of which results in the bill becoming a law. One of them is by signing the bill within ten days, and the other is by keeping it ten days, and refusing to sign it. Even in the event of his approving the bill, it is not required that he shall write on the bill the word approved, nor that he shall date it." Gardner v. the Collector supra

Therefore without the evidence of a repeal: the said-Sec.-7 appears as a Federal-Law and thereby the city-Detroit must defend or obey the federal-law.

Noting of the United- States-Code at 5-U.S.C.-552a, at Sec.-7 : the catch-line(s) are-not a part of the Act, vis a vis the catch-line(s) is without the authority of the Act.

CONCLUSION:

If the city-Detroit had cited a valid-authority at the beginning it is doubtful the action would have been filed. Noting the Congress stated in simple and clear language: the local-government requiring a social-security-number must cite the authority, and at the time of the request. However

to-date, the city-Detroit refuses to cite the authority or change the policy to a voluntary-requirement for a social-security-number and the city-Detroit, withholds the permit form the petitioner.

Whereas the city-Detroit withholds the commercial-permit for the operation of a taxi-for-hire and did not cite an authority other than an arbitrary-policy: notes the failure, or the deprivation of the due-process. Thereby notes the ruling of the circuit-court and the district-court should be reversed, and with a lawful-standard or a stare-decisis upon the Sec.-7 of the Privacy Act of 1974.

Noting the loss of the lawful-chosen-activity, or the time-of-life of the petitioner: failure of the due-process.

And-note a two-conditions upon the petitioner, by the city-Detroit: for a lawful-permit for the operation of a taxi-for-hire, within the venue of the said-city:

(1) the city-Detroit required/requires: the Plaintiff/petitioner must dismiss the instant civil-action, then without a social-security-number the permit may be obtained

or

(2) the Plaintiff/petitioner must disclose a social-security-number, and without the city-Detroit citing any statute, law, regulation, or ordinance that requires the disclosure of the social-security-number.

Damaged is the Thomas-Robert: Peterson.

Fundamental the question: is the city-Detroit and the federal-courts: required to obey the Constitution and federal-laws: to provide the due-process-of-law?

_____date_____

all-rights-reserved

Thomas-Robert: Peterson
[15926-Beaverland]
Detroit, Michigan [48223]

Supreme Court, U.S.
FILED

No. 03 676 NOV 3 2003

OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

Thomas-Robert: Peterson Petitioner

vs.

Detroit: the city Respondents

ON PETITION OF WRIT OF CERTIORARI TO :
UNITED STATES COURT OF APPEALS
THE SIXTH CIRCUIT

APPENDIX

Thomas-Robert: Peterson

(15926-Beaverland)

Detroit, Michigan (48223)

(313)-531-3206

33 pp

LIST OF APPENDIX:

1 The circuit-court-order dismissing the appeal, filed: Aug.-05-2003 : APX : exhibit :---------- A

2 The district-court-order dismissing the complaint and denying motion for reconsideration, and to amend. dated January-23-2003 : APX : exhibit :----------B

3 The district-court-order denying Plaintiffs motions to amend and ordering Plaintiff to show-cause. dated December-18-2002 : APX : exhibit :----------C

4. The district court docket APX : exhibit:---------- D

5 the Complaint : APX : exhibit :----------E

BEST AVAILABLE COPY

No. 03-1122
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

THOMAS ROBERT PETERSON	)	
Plaintiff-Appellant	)	
v.	)	ORDER
CITY OF DETROIT	)	
Defendant-Appellee	)	

Before: DAUGHTREY and MOORE, Circuit Judges; CALDWELL, District Judge*.[1]

Thomas Robert Peterson, proceeding pro se, appeals a district court judgement dismissing his civil action filed pursuant to the Privacy Act, 5U.S.C.s-552a. This case has been referred to a panel of the court pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. Upon examination, this panel unanimously agrees that oral argument is not needed. Fed.R.App.P.34(a).

On August 12,2002, Peterson filed a complaint against the City of Detroit. Peterson alleged that he applied for a taxicab license , and that his application was denied because he refused to disclose his social security number violated the Privacy Act.

Peterson subsequently filed three motions to amend his complaint. On December 18, 2002. the district court denied Peterson's first two motions to amend. On January 23, 2003, the district court denied Peterson's third motion to amend and dismissed Peterson's complaint. Peterson has filed a timely appeal.

[1] The Honorable Karen Caldwell, United States District Judge for the Eastern District of Kentucky, sitting by designation.

We review de novo the district court's dismissal pursuant to Fed. R. Civ.p.12(b)(6). James v Meow Media Inc., 300 F3d 683, 689 (6th Cir.2002) cert.denied, 123 S.Ct. 967 (2003); Columbia Natural Res.,Inc. v Tatum, 58 F3d 11901, 1109 (6th Cir. 1995) When considering a Fed. R. Civ. P. 12(b)(6) motion to dismiss, "[t]he district court must construe the complaint in a light most favorable to the plaintiff, accept all the factual allegations as true, and determine whether the plaintiff undoubtedly can prove no set of facts in support of his claims that would entitle him to relief." Tatum, 58 F,3dat 1109, accord James, 300 F.3d at 689.

Peterson's complaint alleged a violation of s-7(a)(1) of the Privacy Act. See McKay v. Thompson, 226 F3d 752. 755, (6th Cir 2000). Section 7(a)(1) prohibits" any Federal, State or local government agency [from denying] to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number." However, a subsequent amendment to the Social Security Act permits states to require disclosure of social security numbers in the administration of its driver's license law. 42U.S.C.s-405(c)(2)(C)(i). Thus s-7 insofar as it relates to the "privilege" at issue in this case, has been superceded by a subsequent amendment to the Social Security Act. 42U.S.C.s-405(c)(2)(C)(v) (stating that "[i]f and to the extent that any provision of Federal law heretofore enacted is inconsistent with the policy set forth in clause(i), such provision shall, on and after October 4 1976 be null, void, and of no effect"). We therefore conclude that the district court properly dismissed Peterson's complaint, because it fails to state a claim upon which relief may be granted.

[NOTE the circuit-court page-2 is CONTINUED: next page]

We further conclude that the district court properly denied Peterson's motions to amend his complaint. Generally, a districts court's decision to deny a plaintiff's motion to amend his complaint is reviewed under an abuse of discretion standard. Crawford v. Roane 53 F3d 750, 753(6th Cir. 1995). However, when a district court's decision to deny a plaintiff's motion to amend is based upon a "legal conclusion that the amended pleading would not withstand a motion to dismiss," this court reviews that decision de novo. Fisher v Roberts, 125 F3d 974,977(6thCir.1997) (Quoting LRL Properties v Potage Metro Hous.Auth., 55F3d 1097,1104(6thCir. 1995)).

In his first and third motions to amend his complaint. Peterson sought to add additional claims, based upon the same facts,,under 42U.S.C.s-1983 and s-7(b) of the Privacy Act. Peterson's purported s-1983 claim was based upon his contention that the City violated s-7(a)(1) of the Privacy Act. As indicated above, however, s-7(a)(1) has been superceded by s-405(c)(2)(C)(i). Furthermore, like s-7(a) of the Privacy Act, the validity of s-7(b) is questionable after the enactment of s-405(c)(2)(C)(i) and(v). Hence, the district court properly concluded that any amendment to Peterson's complaint to assert a s-1983 of s-7(b) claim would be futile and could not survive a motion to dismiss.

Peterson has waived appellate review of the district court's denial of his second motion to amend his complaint because his appellate brief does not contain any argument as to why the district court's denial of such motion was improper. See Buziashvili v Inman, 106 F3d 709,719 (6Cir.1997) ; Boyd v Ford motor Co., 948 F2d283,284 (6th Cir. 1991)

Accordingly, the district court's judgement is affirmed. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

_____

Clerk

[DATED: FILED AUG O5 2003]
[BY THE LEONARD GREEN, Clerk]

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THOMAS ROBERT PETERSON.
Plaintiff

case No. 02-CV-73279-DT

V
CITY OF DETROIT
Defendant

---/

ORDER DENYING MOTION TO AMEND
AND
DENYING MOTION FOR RECONSIDERATION
AND
DISMISSING COMPLAINT

On December 18, 2002, the court issued an order directing Plaintiff to show cause, in writing, why his case should not be dismissed for lack of subject matter jurisdiction. Since the December order, Plaintiff has filed three documents: a "Response to the Courts Show-Cause," filed on January 2, 2003; a Statement and Claim of Special-Damage(s)," filed on January 13, 2003; and a "Motion (request) for a Reconsideration," filed January 13, 2003. Although these documents, filed *pro-se*, are nearly indecipherable, the court liberally construes them to be the following: a response to the court's December 18 show cause order; a motion to amend the complaint to include a claim under section 7(b) of the Privacy Act of 1974; and a motion for reconsideration of the court's December 18 order denying Plaintiff's motion to amend his complaint to include a claim

under 42 U.S.C. s-1983. These motions will be addressed, in turn, below.

I. RESPONSE TO THE COURT'S SHOW CAUSE ORDER

In it's December 18 order, the court found that the 1976 amendment to the Social Security Act 42 U.S.C.s-405(c)(2)(C)(i), partially repealed s-7 of the Privacy Act and that a s-7 claim based upon the denial of a driver's license "lacks an arguable basis in law." *Duncan v Cone,* No. 00-5705, 2000 WL 1828089, *1 (6th Cir, Dec 7, 2000). Accordingly, since Plaintiff was bringing a suit under s-7(a) of the Privacy Act, the court ordered Plaintiff to show cause why his case should not be dismissed for lack of subject matter jurisdiction, In his response to the show cause order, Plaintiff appears to make two arguments: (1) that 42 U.S.C.s-405(c)(2)(C)(i) does not apply because Defendant cannot identify a legal grant of authority for the requirement that an applicant for a taxi license provide his social security number for the license application; and(2) Plaintiff should be permitted to amend his complaint to include a claim for violation of s-7(b) of the Privacy Act of 1974.

A. 42 U.S.C. S-405(c)(2)(C)(i)

As to Plaintiff's first argument, the court finds that Defendant has sufficiently identified the law that gives them authority to utilize social security numbers in the city's administration of taxi licenses. Thus, 42 U.S.C. s-

405(c)(2)(C)(i) applies to the instant matter, and Plaintiff's claim under s-7(a) will be dismissed.

Section 405(c)(2)(C)(i) provides:

> It is the policy of the United States that any State (or political subdivision thereof) may, in the administration of any tax, general public assistance, driver's license, or motor vehicle registration law within its jurisdiction, utilize the social security account numbers issued by the Commissioner of Social Security for the purpose of establishing the identification of individuals affected by such law, and may require any individual who is or appears to be so affected to furnish to such State (or political subdivision thereof) or any agency thereof having administrative responsibility for the law involved, the social security account number (or numbers, if he has more than one such number) issued to him by the Commissioner of Social Security.

42 U.S.C. s-405(c)(2)(C)(i) . Section 58-1-1, et seq,. of the Detroit City Code of 1984, is a comprehensive regulatory scheme of vehicles for hire, such as taxicabs, within the City of Detroit. The Code provides operation and licensing requirements. including a requirement that drivers be subject to periodic record checks by the police department for criminal convictions. In order to complete efficient and accurate record checks, the city uses the social security numbers of drivers. According to 42 U.S.C. s-405(c)(2)(C)(i) the city's practice of utilizing social security numbers " in the administration of any driver's license, or motor vehicle registration law" is permissible. Thus, Plaintiff has not persuaded the court that s-405(c)(2)(C)(i) is inapplicable to the instant case.

Accordingly, Plaintiff cannot maintain a claim under s-7(a) of the Privacy Act.

B. Section 7(b) of the Privacy Act of 1974

In his response to the court's show cause order, Plaintiff appears to be requesting that he be aloud to amend his complaint to include a claim under s-7(b) of the Privacy Act of 1974.[1] Section 7(b) states, "any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such disclosure is solicited, and what uses will be made of it." Plaintiff's motion to amend., however , will be denied because it is futile.

Federal Rule of Civil Procedure 15 governs amendments to pleadings. Rule 15 provides that, after an answer has been filed, " a party may amend the party's pleading only by leave of the court or by written consent of the adverse party; and leave shall
be freely given when justice so requires " The thrust of this provision" is to reinforce the principle that cases should be

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[1] Plaintiff's response states, "NOTICE: All-Rights-Reserved for the addition of section-7(b) to the complaint of for the asking of the court of the special-damages in the matter of the section-7(b) against the defendant." (Pl.'s 01/02/03 Resp.) On January 13, 2003, Plaintiff submitted a "Statement and Claim of the Special-Damage(s)," which the court construes as a motion to amend the complaint to include a claim against Defendant for violation of s-7(b) of the Privacy Act of 1974. Thus, both Plaintiff's response to the show cause order and his motion for an amendment will be addressed in this section of the order.

tried on their merits rather than on the technicalities of pleadings." *Tefft v. Seward,* 689 F 2d 637, 639 (6th Cir,. 1982).

"In the decision whether to permit an amendment, some of the factors which may be considered by the trial court are undue 'delay in filing, lack of notice to the opposing party, bad faith by the moving party, repeated failure to cure deficiencies by previous amendments, undue prejudice to the opposing party, and futility of amendment.'" General Elec. Co v. Sargent & lundy, 916 F.2d 1119, 1130 (6th Cir 1990) (citing Hageman v. Signal L.P. Gas Inc. 486 F.2d 479, 484 (6th Cir 1973)); see also Siedlik v. Stanley Works, Inc,. 205 F Supp. 2d 762, 763-64 (E.D. Mich.. 2002) ("[W]hear the proposed amendments would provide futile, leave to amend should be denied."). " Futility of amendment may be based on the proposed pleadings if defendants can show that plaintiffs are incapable of surviving a motion to dismiss." Siedlik, 205 F.Supp.2d at 763.

In this case, the court finds that Plaintiff's proposed amendment, which would add a claim under s-7(b) of the Privacy Act, would be futile because such an amendment could not survive a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6). "Although the protection afforded by the Privacy Act is broad, its civil remedy provision is far less expansive."
Dittman v. State of Claifornia, 191 F 3d 1020, 1026 99th Cir. 1999). The private right of civil action created by the Privacy

Act " is specifically limited to actions against agencies of the United States Government. the civil remedy provisions of the statute do not apply against private individuals, state agencies, private entities, or state and local officials." Unt v. Aerospace Corp., 765 F.2d 1440, 1447 (9th Cir.1985); *see also Polchowski v Gorris*, 714 F. 2d 749, 752 (7th Cir 1983) (same); Cardamone v. Cohen 241 F 3ard 520, 24 (6th Cir. 2001) (finding that the Privacy Act borrows the definition of "agency" from the Freedom of Information Act, which defines "agency" as a federal agency); 5 U.S.C. s-552a(g)(1) (providing a civil remedy for an individual when any "agency" violates a provision of the Privacy Act in such a way as to have an adverse effect on the individual).
Thus, considering no private remedy against state agencies exists under the Privacy Act, Plaintiff's proposed amendment could not withstand a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). See Sinlay v. Lamson & Sessions Co., 948 F. 2d 1037, 1041 (6thCir. 1991) motion to amend should be denied when claim would not survive a motion to dismiss). Accordingly, Plaintiff has not persuaded the court that dismissal of his complaint is unwarranted. For the same reasons, Plaintiff's motion to amend will be denied.

II. MOTION FOR RECONSIDERATION

Finally, Plaintiff requests that the court reconsider its December 18, 2002 order denying Plaintiff's motion to amend his complaint to include a claim under 42 U.S.C. s-1983. Rule 7.1(g) of the Local Rules for the Eastern District of Michigan provides that a motion for reconsideration shall be granted only if the movant can (1) "demonstrate a palpable defect by which the court and the parties have been misled" and (2) show that "correction the defect will result in a different disposition of the case." E.D. Mich. LR 7.1(g)(3). A "palpable defect" is a defect which is obvious, clear. unmistakable. manifest or plain. Mktg. Displays, Inc. v Traffix Devices, Inc., 971 F. Supp. 262, 278 (E.D. Mich. 1997) (citing Webster's New World Dictionary 974 (3ard ed. 1988)). A motion for reconsideration which presents the same issues already ruled upon by the court, either expressly or by reasonable implication, will not be granted. E.D. Mich. LR 7.1(g)(3); Czajkowski v. Tindall & Assocs,. P.C. 967 F. Supp. 951, 952 (E.D. Mich. 1997).

Inasmuch as Plaintiff has failed to demonstrate a palpable defect upon which the court was misled, and simply presents the same issues already ruled upon by the court, his motion for reconsideration will be denied.

III. CONCLUSION

IT IS ORDERED that Plaintiff's motion to amend his complaint [Dkt. # 32] is DENIED.

IT IS FURTHER ORDERED that Plaintiff's motion for reconsideration [Dkt. #31] is DENIED.

Finally, after considering Plaintiff's response to the court's December 18, 2002 "Order... Directing Plaintiff to Show Cause," the court finds that dismissal of the complaint is appropriate. Accordingly, IT IS ORDERED that this case be DISMISSED.

ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

date: January 23, 2003

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

THOMAS ROBERT PETERSON.
Plaintiff
V
CITY OF DETROIT
Defendant
/

ORDER DENYING PLAINTIFF'S MOTIONS TO AMEND AND DIRECTING PLAINTIFF TO SHOW CAUSE

Pending before the court are Plaintiff's *pro se* motions to amend, seeking leave to amend his complaint to include a claim under 42 U.S.C. s-1983 and a claim based on a theory of negligence.[1] Defendant responded to Plaintiff's motions on November 8, 2002, requesting that Plaintiff's motions to amend be denied as futile. For the reasons set forth below, Plaintiff's motions to amend will be denied. Further, Plaintiff will be ordered to show cause why this case should not be dismissed for lack of subject matter jurisdiction.

I. BACKGROUND

Plaintiff Thomas Peterson filed a complaint against Defendant City of Detroit ("Detroit") on August 12 2002.

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[1] Plaintiff's first motion to amend was filed on September 27, 2002, and is entitled "MOTION: for an AMENDMENT o JOINDER rule-15(a) and 18(b)." Plaintiffs second motion to amend was filed on October 7, 2002, and is entitled "MOTION for the SUPPLEMENTAL-PLEADINGS."

Plaintiff's complaint alleges that Defendant violated the Privacy Act of 1974, 5 U.S.C. s-552a ("Privacy Act"), when the Detroit Police Department requested that Plaintiff provide his social security number on his application for a taxi-cab-license. (see Def.'s Ex. B.) Plaintiff claims he was denied a taxicab license because he refused to provide his social security number on his application. Plaintiff contends that the Privacy Act prohibits the city from requiring that an applicant provide his social security number to obtain a taxicab license. Plaintiff's instant motions request leave to amend the complaint to include a claim under 42 U.S.C. s-1983 and a negligence claim.

II. STANDARD

Federal Rule of Civil Procedure 15 governs amendments to pleadings. Rule 15 provides that, after an answer has been filed, " a party may amend the party's pleading only by leave of the court or by written consent of the adverse party; and leave shall be freely given when justice so requires." The thrust of this provision "is to reinforce the principle that cases should be tried on their merits rather than on the technicalities of pleadings." *Tefft v. Seward,* 689 F 2d 637, 639 (6th Cir,. 1982).

"In the decision whether to permit an amendment, some of the factors which may be considered by the trial court are undue 'delay in filing, lack of notice to the opposing party, bad faith by the moving party, repeated failure to cure deficiencies by

previous amendments, undue prejudice to the opposing party, and futility of amendment.'" General Elec. Co v. Sargent & lundy, 916 F.2d 1119, 1130 (6th Cir 1990) (citing Hageman v. Signal L.P. Gas Inc. 486 F.2d 479, 484 (6th Cir 1973)); see also Siedlik v. Stanley Works, Inc,. 205 F Supp. 2d 762, 763-64 (E.D. Mich.. 2002) ("[W]hear the proposed amendments would provide futile, leave to amend should be denied."). " Futility of amendment may be based on the proposed pleadings if defendants can show that plaintiffs are incapable of surviving a motion to dismiss." Siedlik, 205 F.Supp.2d at 763.

III. DISCUSSION

A. 42 U.S.C. s-1983

Defendant contends that allowing Plaintiff to amend his complaint to include a claim under 42 U.S.C. s-1983 would be futile because the Privacy Act does not create an individual right which can be remedied under s-1983. Defendants argue that Plaintiff's s-1983 claim should not be added to the complaint because it "could not withstand a Fed. R. Civ. P. 12(b)(6) motion." Sinlay v. Lamson & Sessions Co., 948 F.2d 1037, 1041 (6th Cir. 1991). Thus, Plaintiff should not be permitted to add a s-1983 claim unless the Privacy Act of 1974 creates an individual right enforceable through a private lawsuit.

"Section 1983 imposes liability on anyone who, under the color of state law., deprives a person 'of any rights, privileges, or immunities secured by the Constitution and laws, [including] ...certain rights conferred by federal statutes.' " Blessing v Freestone, 520 U.S. 329, 340 (1997). "in order to seek redress through s-1983, however, a plaintiff must assert the violation of a federal *right*, not merely a violation of federal law." Id. (emphasis in original) (citing *Golden State Transit Courp. v. Los Angeles, 493 U.S. 103, 106* (1989)). Deciding whether a personal right exists under s-1983 "require[s] a determination as to whether or not Congress intended to confer individual rights upon a class of beneficiaries." *Gonzaga Univ. v Doe --U.S.--, 122 S.Ct. 2268, 2276* (2002). " The question is not simply who would benefit from the Act, but whether Congress intend to confer federal rights upon those beneficiaries." *California v Sierra club* 451 U.S. 287, 294 (1981).

Inasmuch as Plaintiff cannot show that the Privacy Act creates an individual right remediable by s-1983, Plaintiff will not be permitted to amend his complaint to include such a claim. The sole claim asserted in Plaintiff's complaint was a violation of s-7(a)(1) of the Privacy Act, Pub. L. No. 93-579
(codified at 5 U.S.C. s-552a note). Section 7(a)(1) provisos, "It shall be unlawful for any Federal State or Local government agency to

deny to any individual any right, benefit or privilege provided by law because of such individual's refusal to disclose his social security account number."

Plaintiff, however, cannot bring an action against Defendant Detroit under this provision because it has been repealed in part. "The Privacy Act has been repealed to the extent that it conflicts with a newer federal law which now permits a state to use social security numbers in the administration of its driver license law and to require individuals to furnish their social security numbers for that purpose. " Duncan v Cone, No. 00-5705, 2000 WL 1828089, *1 (6th Cir. Dec. 7. 2000) (citing 42 U.S.C., s-405(c)(2)(C)(i) and (v) as the "new law" that replaced portions of the Privacy Act). The relevant provision of the Social Security Act, 42 U.S.C. s-405(c)(2)(C)(i), provides as follows:

> It is the policy of the United States that any State (or political subdivision thereof) may, in the administration of any tax, general public assistance, *driver's license*, or motor vehicle registration law within its jurisdiction, utilize the social security account numbers issued by the Commissioner of Social Security for the purpose of establishing the identification of individuals affected by such law, and *may require any individual who is or appears to be so affected to furnish to such State (or political subdivision thereof) or any agency thereof having administrative responsibility for the law involved, the social security account number* (or numbers, if he has more than one such number) issued to him by the Commissioner of Social Security.

42 U.S.C. s-405(c)(2)(C)(i) (emphasis added)

As the Sixth Circuit recognized in Duncan, the 1976 amendment to the Social Security Act has partially repealed s-7 of the Privacy Act, and a s-7 Claim based upon the denial of a driver's license "lack[s] an arguable basis in law." Duncan, 2000 WL 1828089, *1; *see also Stoianoff v Commissioner of the De't. of Motor Vehicles*, No. 00-9090, 2001 WL 568129, *1 ("Assuming arguendo the existence of a private right of action under the Privacy Act,...[Plaintiff's] Privacy Act claim fails nonetheless because the Social Security Act expressly authorizes states to require the disclosure of social security numbers in the administration of driver's license programs...."). In fact, Congress provided, "if and to the extent that any provision of Federal law heretofore enacted is inconsistent with the policy set forth in [42 U.S.C. s-405(c)(2)(C)(i), such provision shall, on and after October 4, 1976, be null, void, and of no effect." 42 U.S.C. s-405(C)(2)(C)(v).[1]

As discussed above, Plaintiff does not have a federal right underwhich he can seek redress based upon-7 of the Privacy

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[1] At least one court has concluded that s-7 of the Privacy Act was never even codified. *see Stoianoff v Commissioner. of Motor Vehicles,* 107 F. Supp. 2d 439, 422 (S.D.N.Y. 2000) (holding that s-7 was never codified and remains in the statute only as a historical note). Indeed, it appears that s-7 of the Privacy Act was palled as a public law, but was designated as a note for purposes of the United States Code. in any event , the courts holding that s-7 has been in relevant part applies regardless of whether s-7 is an actionable statute.

Act. In as much as any proposed S-1983 claim would be based upon a repealed statute, Plaintiff will not be permitted to add such a claim to his complaint. Further, the court finds that the claim asserted in Plaintiff's complaint, the s-7 claim, fails to state a claim upon which relief can be granted because that section has been repealed in relevant part. Thus, the court will order Plaintiff to show cause why his case should not be dismissed for lack of subject matter jurisdiction.

B. Negligence

Plaintiff also made a motion to amend his complaint to add a negligence claim. Again, Defendant argues that the addition of this claim would be futile because Defendant is entitled to immunity from this state law tort claim. First, the court notes that even if Plaintiff were permitted to amend his complaint to add a negligence claim, his case would be dismissed for lack of subject matter jurisdiction because, as discussed above, Plaintiff does not appear to have a sustainable federal law claim and Plaintiff has not shown that diversity jurisdiction exists. Further, the court will deny Plaintiff's motion to amend because such a claim could not withstand a motion to dismiss. *see Siedlik,* 205 F Supp. 2d at 763.

In general, government agencies are immune from state law tort claims, such a negligence claims, in Michigan. Michigan Compiled Laws 691.1407 ("1407") states, "Except as otherwise

provided in this act, a governmental agency is immune form tort liability if the governmental agency is engaged in the exercise or discharge of a governmental function"[1]

First, the court must determine if the city of Detroit is a governmental agency as defined under the immunity statute. For purposes of s-1407, "governmental agency" means "the state or a political subdivision" Mich. Comp. Laws s-691.1401(d). The definition of a "political subdivision" includes a municipal corporation, which is defined as " a city, village, or township or a combination of 2 or more of these when acting jointly." Mich. Comp. Laws s-691,1407.

Next, the court must determine if the Defendant was "engaged in the exercise or discharge of a governmental function," when it processed Plaintiff's application for a taxi-license. A "governmental function" is an "activity that is expressly or implied mandated or authorized by constitution, statute, local charter or ordinance, or other law. Mich. Comp. Laws s- 691.1401(f) Defendant Detroit, as a city in Michigan is

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[1] A plaintiff can overcome a claim of governmental immunity if is shows that the alleged tort falls within one of the statutory exceptions. see Mac v. City of Detroit, 649 N.W.2d 47 (MICH. 2002). Plaintiff has not alleged facts sufficient to show that any statutory exception applies. see Mich. Comp Laws s-691.1402 (exemption for defective highway), 691.1405 (negligent operation of a government-owned vehicle), 691.1406 (defective public building), 691.1407(4) (operation of hospital), and 691.1413 (proprietary function)

authorized to regulate its streets, alleys, and public ways. *see* Mich. Comp Laws s-117.4h . Defendant may also regulate trades and occupations within its boundaries. see Mich. Comp Laws-117.4i. Thus Defendant was engaged in the exercise of a governmental function because it was authorized, at least impliedly, to process taxi licenses under state law. see Lorrane Cab Co v City of Detroit, 98 Nw 2d 607 (1959) (holding that Detroit's taxicab ordinance was valid and not superceded by he state's Motor Carrier Act).

IV. CONCLUSION

IT IS ORDERED that Plaintiff's motions to amend [Dkt. ## 10, 12] are DENIED

Plaintiff IS ORDERS TO SHOW CAUSE, in writing, **no later than January 6. 2003,** why his case should not be dismissed for lack of subject matter jurisdiction.

ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Date: December 18, 2002

----- CIVIL DOCKET ----- as of 1-28-03 10:46am
------ DISTRICT COURT ----- Closed Appeal
Proceedings include all events. [of the district-court]
2 : 02cv73279 Peterson v. Det City

8 /12 /02 -- 1 -- COMPLAINT; jury demand Receipt # 200442546 --Date fee Received: 8 / 12 / 02 with attachment A (dh) [entry date 8 / 13 / 02

8 /14/02 -- 2 -- Summons returned executed by process service on 8/12/02- answer due 9/1/02 for Det (dh) [entry date 9/3/02]

8 /30/02 -- 3 -- Answer by defendant Det City to complaint]1-1] with proof of service (dh) [entry date 9/3/02]

8 /30/02 -- 3 -- Affirmative defenses by defendant Det City (dh) [entry date 9/3/02]

9 /5/02 -- 4 -- NOTICE of Rule 16 and Rule 26(f) scheduling consultation (DT) [entry date 9/6/02]

9 /6/02 -- 5 -- ANSWER by plaintiff Thomas Robert Peterson to answer by Det City [3-1] (RH) [entry date 9/9/02]

9 /6/02 -- 5 -- ANSWER by plaintiff Thomas-Robert Peterson to affirmative defenses by Det City [3-1] (RH) [entry date 9/9/02]

9/13/02 -- 6 -- Affidavit by plaintiff Thomas Robert Peterson regarding formal legal status and notice of rule 16 and 26(f) (1h) [entry date 9/17/02]

9/13/02 -- 7 -- Proof of service by plaintiff Thomas Robert Peterson of [5-1]. [5-1] (1h) [entry date 9/17/02]

9/16/02 -- 8 --MOTION by plaintiff Thomas Robert Peterson for summary judgement with affidavit and proof of service (no brief) (1h) [entry date 9/17/02]

9/20/02 -- 9 -- NOTICE of Rule 26(f) plan and status report (ew) [entry date 9/24/02]

9/27/02 -- 10 -- MOTION by plaintiff Thomas Robert Peterson for amendment of joinder rule 15(a) and 18(b) with affidavit proof of service (dh) [entry date 9/30/02]

9/27/02 -- 11 -- Proof of service by plaintiff Thomas Robert Peterson of rule 26 plan and status report (dh) [entry date 9/30/02]

10/7/02 - 12-- MOTION by Thomas Robert Peterson for the supplemental pleadings with affidavit and proof of service (kb) [entry date 10/9/02]

10/7/02 --13 -- RESPONSE by Det City to motion for summery judgement by Thomas Robert Peterson [8-1] with exhibits A-H and proof of service (kb) [entry date 10/9/02]

10/8/02 --14-- ORDER by Judge Robert H. Cleland denying motion for summary judgement by Thomas Robert Peterson [8-1] without prejudice, with proof of service [EOD date 10/10/02] (kb) [entry date 10/10/02]

10/16/02--15-- (STRICKEN) REPLY by plaintiff to response to motion for summary judgement by Thomas Robert Peterson [8-1] with exhibits (pp) [entry date 10/17/02] [Edit date 10/15/02]

10/21/02--16-- Proof of service by plaintiff Thomas Robert Peterson of [15-1] (dt) [entry date 10/21/02]

10/23/02--17-- NOTICE of setting deadline for response to motion for the supplemental pleadings [12-1] [10-1] for 11/18/02 (dt) [entry date 10/24/02]

10/24/02--18-- ORDER by Judge Robert H. Cleland striking response reply by Thomas Robert Peterson [15-1] [EOD date 10-25-02] with proof of service (DT) [entry date 10-25-02]

10/24/02--19--PRETRIAL scheduling order by Judge Robert H. Cleland setting deadline for amended pleadings for 11-1-02, setting deadline for witness list for 1-17-02, setting deadline for discovery for 1-31-03, setting deadline for filing dispositive motions for 3-3-03, setting deadline for filing dispositive motions for 3-3-03, setting deadline for pretrial order for 6-16-03, setting final pretrial conference for 6-23-03, setting civil jury trial for JULY/AUG 2003 (DT) [entry date 10-25-02]

10/24/02-20-- ORDER by Judge Robert H. Cleland setting conference and referring [20-1][20-2][20-3] to magistrate judge Virginia M. Morgan [EOD date 10-25-02](DT) [entry date 10-25-02]

10/28/02--21-- NOTICE by court setting mediation settlement conference for 10:00 12-10-02 (RH) [entry date 10-25-02]

11/1/02--22-- MOTION by the plaintiff Thomas Robert Peterson to amend pleadings to the complaint, with brief attachments and proof of service. (RH) [entry date 11-4-02]

11/5/05--23-- WITNESS LIST by plaintiff Thomas Robert Peterson (IH) [entry date 11-06002]

11/7/02--24-- WITNESS LIST by defendant Det City with proof of service (Ih) [entry date 11-8-02]

11/8/02--25-- RESPONSE by defendant Det City to motion to amend pleadings to the complaint by Thomas Robert Peterson [22-1], motion for the supplemental pleadings by Thomas Robert Peterson [12-1] with attachments (ew) [entry date 11-12-02]

11/14/02--26-- REPLY by plaintiff to response to amend pleadings to the complaint by Thomas Robert Peterson [22-1] motion for the supplemental pleadings by Thomas Robert Peterson [12-1] with attachments (ew) [entry date 11-15-02]

11/15/02--27-- Proof of service by plaintiff Thomas Robert Peterson of preliminary witness list (dh) {entry date 11-18-02]

12/10/02----- SETTLEMENT conference held Magistrate Virginia M. Morgan (jo) [entry date 12-10-02]

12/18/02--28-- ORDER by Judge Robert H. Cleland denying motion to amend pleadings to the complaint by Thomas Robert Peterson [22-1], denying motion for amendment of joinder rule 15(a) and 18(b) by Thomas Robert Peterson [10-1], for plaintiff Thomas Robert Peterson to show cause not to be dismissed for lack of subject matter jurisdiction writing within 30 days [EOD 12-19-02] (RH) [entry date 12-19-02]

1/2/03/--29-- RESPONSE by [plaintiff to order for plaintiff Thomas Robert Peterson to show cause why this case should not be dismissed for lack of subject matter jurisdiction [28-1] order [28-2] with attachments (ew) [entry date 1-3-03] [edit date 1-3-03]

1/13/03--30-- WITNESS list by Thomas Robert Peterson kb) {entry date 1-15-03]

1-13-03--31-- Motion by Thomas Robert Peterson for reconsideration of joinder on 42-USC-1983 and notice of special damages with exhibit A (kb) [entry date 1-15-03]

1-13-03--32-- Statement by Thomas Robert Peterson and claim of special damages [EOD date 1-15-03] (kb) [entry date 1-15-03]

1/13/03--33-- PROOF of service by Thomas Robert Peterson of [29-1] (kb) [entry date 1-15-03]

1/17-03--34-- PROOF of service by Thomas Robert Peterson of [32-1][31-1][30-1] (PP) [entry date 1-21-03]

1/23/03--35-- ORDER by Judge Robert H. Cleland denying motion for reconsideration by Thomas Robert Peterson [31-1][31-2] denying statement (construed by the court as a motion to amend) by Thomas Robert Peterson [32-1] and dismissing complaint [EOD date 1-27-03] with proof of service (DT) [entry date 1-27-03]

1/27/03--36-- JUDGEMENT entered by Judge Robert H. Cleland for defendant [EOD date 1-27-03](DT)[entry date 1-27-03]

1/27/03--37-- APPEAL by plaintiff Thomas Robert Peterson of orders [36-1] and [35-1] to USCA-FEE: PAID -Receipt # 481675 (do) {entry 1-28-03]
1/28/03--38-- PROOF of service of appeal notice [37-1]to USCA Thomas Peterson and James Noseda (do) [entry date 1-28-03]
1/28-03--39-- CERTIFIED copy of notice by Thomas Robert Peterson [37-1] and docket transmitted to USCA (do) [entry date 1-28-03]

Of the United States of America:
the Court of the District:
for the Eastern-District of the State: Michigan

Thomas-Robert: Peterson / (Civil No.:)
^ plaintiff (Judge :)
v.
Detroit : the City /
^ defendant(s) **(COMPLAINT)**

[a 5-pages with a 6-page-attachment] [8-12-02]

plaintiff
Thomas-Robert: Peterson [in-person]
[15926-Beaverland]
Detroit, Michigan [48223]
(313-531-3206)
[48226]

defendant-service
Ruth Carter
City-Attorney-Detroit
660-Woodward Ave.
Suite-1650
Detroit Michigan.

{ COMPLAINT }

Note: the plaintiff : in-person, is-not a trained or licensed : lawyer or attorney.

Now in the Court of the District, of the Eastern-District of the Michigan, of the United States of America ; as a proper party and as the Plaintiff : the Thomas-Robert: Peterson.

SECTION [A] : The parties :

As the Plaintiff: the Thomas-Robert: Peterson : is a human being and not a corporation, and not a attorney-or-lawyer, and the domicile of the said-Plaintiff is of a Location within the Detroit: a city of the Michigan: a State of the United States of America.

As the Defendant: the Detroit: is a city, of the State: Michigan and thereby of the United States of America.

SECTION [B] : The jurisdiction :
[a] "*28 USC* Sec. *1331* 01/02/01 "
"Sec. 1331. Federal question "
"The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States"
[b]As a tort-action.

SECTION [C] : The claim and the cause of the action :
[a] Claim: a unlawful-violation of the Privacy Act of 1974 by the city: Detroit: thereby: Damaged is the Plaintiff the Thomas-Robert: Peterson.
[b] For the reason of a refusal by the Plaintiff : the Thomas-Robert: Peterson of the disclosure of the Social-Security-Account-Number of the Plaintiff : the Thomas-Robert: Peterson , to the GENERAL-LICENSING-UNIT : of the City: Detroit : denied is the Plaintiff: the Thomas-Robert: Peterson of a right, benefit, or a privilege ; namely a license/permit for the operation of a taxi within the City: Detroit ; thereby an unlawful-violation; of the Section-7-(a)(1) of the P.L.-93-579 ; The Privacy Act of 1974; 5-USC-552a : thereby: damaged is the Plaintiff : the Thomas-Robert: Peterson by an unlawful act of the Defendant: the City: Detroit.

CITE : *Section-7 of The Privacy Act of 1974 ; Public-Law-93-579-Dec.-31-1974; 88-Stat.-1896; codified at the 5-USC-552a.*
"(a)(1) It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual's refusal to disclose his social security account number.

[PAGE-2 CONTINUED]

"(2) the (The) provisions of paragraph (1) of this subsection shall not apply with respect to
"(A) any disclosure which is required by Federal statute, or
"(B) the disclosure of a social security number to any Federal, State, or local agency maintaining a system of records in existence and operating before January 1, 1975, if such disclosure was
required under statute or regulation adopted prior to such date to verify the identity of an individual.
"(b) Any Federal, State, or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it."

(PAGE-2 CONTINUED)

SECTION [D] The Events :

[a] On the date of August-1-2002 : at the DETROIT GENERAL LICENSE UNIT at the 2110 Park Ave. Detroit, Michigan : the Plaintiff : the Thomas-Robert: Peterson: attempted the acquiring of a license/permit for the operation of a Taxi-Cab within the city-limits of the City : Detroit, with the result , FOR THE REASON of the refusal of the disclosure of a Social-Security-Account-Number : DENIED OF THE SAID-LICENSE is the Plaintiff: the Thomas-Robert: Peterson. Notwithstanding the City-Detroit-paperwork, as a "request" for the procurement of the license includes an area marked for the disclosure of a Social-Security-number however the said-paperwork is without an Privacy-Act-Notice *.

* *A Privacy-Act-Notice : defined as to a Social Security Account Number in the Privacy Act of 1974- Section-7(b) supra : is the disclosure voluntary or mandatory? and of any authority for the disclosure-request?*

[b] [Same-Day-same-event] On the date : August-1-2002 , informed are the personal of the said LICENSE-UNIT, of a requirements of the Sec.-7-(b) of the Privacy Act of 1974 * including the REQUIREMENT for the CITE of the AUTHORITY for a request of a SOCIAL SECURITY ACCOUNT NUMBER by a LOCAL GOVERNMENT AGENCY .

NOTE: the said-personal are a Officer-C.-Williams and a Sargent Rodriguez.

*CITE: of Sec.-7 of The Privacy Act of 1974 supra.

[c] [Same-Day-same-event] On the date : August-1-2002: upon a attempt by the Plaintiff : the Thomas-Robert: Peterson ; of the reading the Sec.-7 of the Privacy Act of 1974 to the said-GENERAL-LICENSE-personal : ordered is the Plaintiff the Thomas-Robert: Peterson to leave the building [2110-Park] by the Officer-C.-Williams in the Presence of the Sargent-Rodriguez.

[d] In the same-day: 8-1-02 : in an attempt for the obtaining of the said-license: the Plaintiff : the Thomas-Robert: Peterson, called the office of the supervisor of the Sargent-Rodriguez and the office of the Chief of Police of the City: Detroit, and talking to a Officer-White, an Officer-Williams, a Sargent-Miller, and a Sargent-Myles, and after outlining to the said-personal the matter of the unlawful-requirement by the city: Detroit, for the disclosure of the Social-Security-Account-Number for the right, benefit, or privilege of a License/Permit for the operation of a taxi-cab by an individual within the city-limits of the City: Detroit , and including the citing of the Section-7 of the Privacy Act of 1974, to the named-personnel : the Plaintiff : the Thomas-Robert-Peterson for the reason: of the refusal of a disclosure of a Social-Security-Account-Number to the Defendant: Detroit: is again refused the said-license/permit by the Defendant: Detroit.

[e] Attached as the *EXHIBIT-A* is a <u>six page</u>: AFFIDAVIT-OF-TRUTH by the Plaintiff: the Thomas-Robert: Peterson: a true witness and with a first-hand-knowledge to the details of the events of the subject-matter of the action. NOTE: the said-attached-Affidavit by the competent-witness is signed under the penalties of perjury in the presence of a notary-public.

<u>SECTION [e] : The jury demand:</u>

the Plaintiff: the Thomas-Robert: Peterson : requests a jury-trial.

<u>SECTION [F] The request for relief.</u>

[a] <u>Request by the Plaintiff :</u> For a declaratory-judgement in the matter of the Defendant-Detroit : requesting without a Privacy-Act-Notice : a Social-Security-Account-Number.

NOTE: the term " Privacy-Act-Notice means a compliance with section-7(b) of the Privacy Act of 1974.

[b] Request by the Plaintiff:

For the money-damages in the amount of the lost wages based on an amount of ($35,000.00) thirty-five-thousand-dollars-per-year (50-weeks) : a ($700.00) seven-hundred-dollars-per-weekor an any-part of a week from the date of the August-1-2002 until the said-license is obtained by the Plaintiff: the Thomas-Robert: Peterson

[c]

Request by the Plaintiff:

For the PUNITIVE-DAMAGES: as a money-damages in the amount of a ($10.000.00) ten-thousand-dollars.

and/or

For a additional-retrospective-damages : a money-damages in the amount of a ($10,000.00) ten-thousand-dollars for the mental-suffering and for the reason of a set-back in the career of the Plaintiff: the Thomas-Robert: Peterson.

[d] Request by the Plaintiff: For the reasonable-costs of the litigation.

_____DATE_____

Thomas-Robert: Peterson
all-rights-reserved
Thomas-Robert: Peterson
[15926-Beaverland]
Detroit, Michigan [48223] 313-531-3206